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ABSTRACT

A study evaluated competing explanations for differences in the public records laws of the American states. Data for the study came from a review of the annotated statutes for the 48 contiguous states, summaries of appellate court interpretations, and attorney general opinions about the meaning of the laws' provisions. The laws were examined for the presence or absence of 16 provisions related to broad rights of access to information. Results indicated that there was no direct relationship between political culture and public record laws, but a fairly strong relationship between policy liberalism and public record laws. (One table of data is included; 25 notes, a description of each of the 16 provisions, and an appendix of data are attached.) (RS)

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POLITICAL CULTURE, POLICY LIBERALISM, AND PUBLIC RECORDS LAWS IN THE AMERICAN STATES

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Introduction

Although all of the American states have adopted laws that allow some form of public access to governmental records, the scope of access provided for by the laws varies widely. In some states, the public has only a very narrow right of access to governmental records, while in others the right of access is quite broad.[1]

Practitioners of journalism and scholars of journalism share an interest in knowing the major sources of variation in public records laws in the United States. This article attempts to add to our understanding of that variation by evaluating competing explanations for differences in the public records laws of the American states.

Background

One possible explanation for differences in state laws about access to information is political culture, which varies among the states. Almond, who pioneered the use of the concept of political culture as an analytical tool in the comparative study of political systems, defined political culture as a political system's "particular patterns of orientation to political action."[2] Ten years later, Elazar claimed that historical patterns of migration in the United States had produced three distinct political cultures: individualistic, moralistic, and traditionalistic.

Despite their roots in patterns of migration, the American political cultures are not directly related to regionalism. Indeed, states with a given

political culture can be found at opposite ends of the country, just as states that border each other can have different political cultures.[3] Elazar suggested that his scheme of political culture be applied to the study of differences between the American states.

Elazar's suggestion proved to be quite provocative; his taxonomy of political culture, or variations of it, has provided the theoretical framework for numerous studies in the past two decades of differences between the states. The book in which he first proposed the notion is in its third edition.[4]

From Elazar's point of view, the role of government in a moralistic political culture is to actively promote the greatest good for the greatest number of citizens. Politics is seen as a noble activity through which the entire community benefits. Political participation is viewed as a civic duty; indeed, the common citizen is considered to be the primary political actor. Public officials are expected to serve public, rather than private, interests. Tolerance for political corruption is low. Political competition tends to be high, but party allegiances are rather weak because citizens are more oriented to issues and principles than to political parties. Examples of moralistic states are Vermont, Minnesota, and Oregon.

The role of government in an individualistic political culture is more limited. In individualistic political cultures, politics is seen as kind of a marketplace in which private interests compete for private gain; the role of government is to keep the marketplace functioning efficiently, but not to intervene. Political life is seen as one of many legitimate means by which individuals may improve themselves. Tolerance for political corruption is

relatively high. Although party competition in individualistic cultures tends to be high, the parties are controlled by career politicians, and party loyalty is valued. Examples of individualistic states are New Jersey, Indiana, and Nevada

Finally, traditionalistic political culture values a paternalistic and elitist view of politics and government. Important positions in government tend to be held by people at the top of the social order, who view their role as conservative and custodial. Government's principal function is to preserve the existing social structure. Broad political participation is discouraged by various means, and political parties are not viewed as very important. Most of the traditionalistic states are in the South; examples include Virginia, South Carolina, and Mississippi.

Sharkansky, the first scholar to test Elazar's notions empirically, found a strong correlation between the presence of moralistic political culture and measures of political participation.[5] Many others since Sharkansky have also found that political participation is highest in states with moralistic cultures.[6] Political culture also seems to make a difference in voting outcomes. For example, state political cultures were much more important than state demographic characteristics in accounting for state voting in presidential elections in 1976, 1980, and 1984.[7]

Although no previous research has attempted to link political culture directly to state laws concerning access to information, the political culture that values political participation -- the moralistic culture -- might also be expected to foster conditions that would allow the greatest degree of access to governmental information. Citizens have no general constitutional right of

access to information; determining what kinds of information must be available to the public is "clearly a legislative task," the U.S. Supreme Court has said.[8] Accordingly, states that adopt statutes permitting citizens broad access to governmental information can also be viewed as providing for greater accountability. To the extent that that is true, states with the political culture that fosters accountability most would be expected to provide the broadest rights of access to governmental information.

Research by Ritt suggested that governments in moralistic states tend to be more accountable than those in individualistic or traditionalistic states,[9] though the measure of accountability in Ritt's study did not incorporate rights of access to information. Nonetheless, the relatively high level of accountability in moralistic states may explain those states' low tolerance for political corruption.

A survey of legislators in 24 states by Peters and Welch found that respondents' attitudes toward political corruption were related to state political cultures, with legislators from moralistic states being less tolerant of corruption and believing that it is less frequent than legislators from individualistic and traditionalistic states.[10] Building on the work of Peters and Welch, Kincaid studied federal convictions of corrupt public officials in the 1970s, hypothesizing that there should be the most corruption in judicial districts with individualistic political cultures, an intermediate level in districts with traditional cultures, and the lowest level in districts with moralistic cultures. His findings strongly supported the hypothesis.[11] Kincaid suggested that political culture is related to corruption in two ways:

> First, political culture helps to determine the limits of tolerance for corruption and definitions of it. Second, since much of corruption is secretive, its control requires, in part, the inculcation of norms and values which enable public officials to resist temptations when opportunities arise. In turn, a general public attitude of resistance to corruption is likely to curtail the number of opportunities in the first place.[12]

In short, government in moralistic states tends to be more accountable, legislators tend to be less tolerant of corruption, and citizens tend to be more active, more issue-oriented participants in politics. The logical hypothesis that flows from such results is that moralistic states -- where accountability, intolerance for corruption, and political participation are high -- would be expected to provide the broadest rights of access to governmental information.

Conceptually distinct from the rather abstract notion of political culture is the more concrete concept of policy liberalism, which has been defined as the level of "predisposition toward extensive use of the public sector."[13] Policy liberalism flows from public opinion,[14] and is associated with early adoption of policy innovations such as workmen's compensation and consumer-protection laws, with greater protection for civil rights, with strong regulations on energy conservation and environmental protection, with greater emphasis and spending on social programs for the disadvantaged, and so on.

Although the relationship between state policy liberalism and the content of policies is quite direct, the results of research that has examined the links between states' political cultures and their policies have been mixed. Sharkansky found a strong relationship between political culture and citizen political participation, but political culture was associated only moderately with what he called the "forms and outputs" of state government.[15]

In theory, greater provisions for accountability via the mechanism of broad rights of access to public information could be construed as either liberal (e.g., as a means of enhancing citizen participation in government) or conservative (e.g., as a limit on the power of the government). However, when journalists talk about "liberal" press legislation they typically have in mind that which provides the broadest rights for and fewest restrictions on the press. If this commonly held belief is true, then higher levels of policy liberalism in a state should be positively associated with public-records law provisions that allow for greater openness.

Few scholars have attempted to link socio-political characteristics of governmental units to the content of laws that regulate media behaviors. Among the most notable efforts are Weaver's cross-national studies, which proposed and tested causal models that attempted to related resources, urbanism, education, mass media development, stress on government, and government accountability to press freedom.[16]

In a study of the American states, Hale examined the correlations between eight measures of press rights in the states and 43 variables representing social, economic, cultural, and political characteristics of the states.[17] Hale found no clear patterns of relationships; only 26 of the 344 correlations in his study were significant at the p=.05 level.

Although no existing research explicitly uses the concepts of political culture or policy liberalism to explain the provisions of laws relating to the media, a few studies have tried to relate political culture to mass communication content. Moore, for example, found that county political culture in Pennsylvania was helpful in explaining variations in newspaper

coverage of electoral campaigns.[18] And state political culture was found to be correlated with the content of political advertising on television. Specifically, advertisements from individualistic cultures were more likely to stress partisan identity and personal qualities of candidates than were advertisements from moralistic cultures, while advertisements from moralistic cultures were more issue-oriented.[19]

Data and method

As mentioned earlier, Elazar's political cultures are rooted in historical patterns of migration. Because Alaska and Hawaii developed outside of the historical patterns that affected the lower 48 states, they were excluded from the analysis.

Data for this study came from three sources. Information about the provisions of state public records laws and about how those provisions have been interpreted came from a review of the annotated statutes of each state. The annotated statutes were useful because they include not only the texts of the appropriate statutes, but also summaries of appellate court interpretations and attorney general opinions about the meaning of the laws' provisions. All of that information -- the texts of the statutes, how courts and state attorneys general have interpreted the statutes -- was considered in the coding process.

We examined the laws for the presence or absence of 16 provisions related to broad rights of access to information. The items included provisions such as whether the statute contained a clear statement that access rights should be liberally construed, and whether the statute contained an explicit provision for civil or criminal penalties for the arbitrary withholding of

public records. The complete list of the 16 provisions is in Appendix 1. Coding was done by the authors, who coded "1" for presence of a provision, and "0" when a provision was not present. In a few cases, portions of the laws (and how appellate courts and/or state attorneys general have interpreted them) were not entirely clear. In such cases, the two authors discussed the laws and coded the provision in question as "0" unless both were persuaded that the attribute was present.

A simple index of the "openness" of each state's law was created by summing across the 16 provisions. A state's score on the index, accordingly, could range from 0 to 16. The mean was 6.94, with a range from 1 (North Dakota and Utah) to 15 (Wisconsin). Appendix 2 contains the results of the coding of the laws.

Not all of the provisions are of equal importance, however. Journalists, for example, often have an especially strong interest in timely access to documents. A law that allows the custodian of a document to delay a decision whether to allow access tends to be a weak law for journalists, regardless of its other provisions.

Both authors spent several years as newspaper reporters; each has considerable experience using public records laws to try to gain access to information. They used that experience to isolate what they considered to be five key provisions of state public records laws:

(a) Whether the central factor in determining whether something is an agency record is whether a public agency has custody of it, as opposed to a more restrictive definition. In some states, for example, the only records subject to the public-records laws are those that an agency is required to maintain.

(b) Whether exemptions to mandatory disclosure are permissive; e.g., whether the custodian of records has discretion to disclose even those records that fall within an exemption to the normal rule of disclosure.

(c) Whether the disclosable portions of a record that contains both disclosable and non-disclosable information must be made public.

(d) Whether separating disclosable from non-disclosable information is free.

(e) Whether the law contains a provision for a timely agency response (i.e., within 10 days) to a request for access to information.

None of these provisions was highly correlated with any of the others; the highest correlation among them was .43. Accordingly, an index of key provisions was created by summing across the five provisions detailed above. A state's score on this more focused index, accordingly, could range from 0 (11 states) to 5 (California and Wisconsin). The mean was 1.63.

We used Elazar's measures of political culture. Because moralistic states were expected to grant broader rights of access to public records than either individualistic or traditionalistic states, we coded the 16 moralistic states as "1" on the political culture variable, and the other 32 states "0." The 16 states in which Elazar considers moralistic political culture to be dominant are California, Colorado, Idaho, Iowa, Kansas, Maine, Michigan, Minnesota, Montana, New Hampshire, North Dakota, South Dakota, Utah, Vermont, Washington, and Wisconsin. We did not use Sharkansky's index of political culture, because even its creator doubted its validity.[20]

We used Klingman and Lammers' policy liberalism scores for each state. Those scores were derived from a factor analysis of several existing measures,

including an index of state policy innovativeness, a scale of anti-discrimination provisions in state laws, and the average monthly payment per recipient of Aid to Families with Dependent Children in each state. None of the components of the policy liberalism measure had anything to do with access to information or with press rights.[21]

We tested the relationships between the measures of public-record-law "openness," political culture, and policy liberalism in the 48 states with Pearson correlations.

Results

The correlations between the independent variables (presence of moralistic political culture, policy liberalism) and the dependent variables (the 16-item index of "openness" of state public-records laws, the more focused five-item index of openness) are shown in Table 1.

Table 1 about here

The hypothesized relationship between moralistic political culture and the openness of states' public records laws was not supported by the data. The correlations between political culture and both measures of openness (the 16-item index and the more focused five-item index) were close to 0 and not statistically significant.

The hypothesized relationship between policy liberalism and openness, on the other hand, was supported by the results of the analysis, as Table 1 shows. The correlation between policy liberalism and the 16-item index of openness was .30 ($p < .02$). The correlation between liberalism and the more focused five-item index of openness was .49 ($p < .001$).

Although the correlation between policy liberalism and moralistic political culture was moderately strong (r=.38), the observed relationship between policy liberalism and public-records-law openness was not weakened by controlling for moralistic political culture.

Discussion

Building on an existing body of research in political science, this study explored the possibility that state political culture and/or state policy liberalism were related to the content of an important mechanism of government accountability -- state public records laws.

The study found no direct relationship between political culture and public records laws, but a fairly strong relationship between policy liberalism and public records laws. The results suggest that, despite the well-established link between political culture and political participation, the influence of political culture apparently does not extend to tools of participation and accountability such as public records laws.

The existence of the relationship between policy liberalism and the relative "openness" of public records laws validates the notion commonly held among journalists that statutes can be categorized as more or less "liberal."

That said, it is clear that policy liberalism is not the only determinant of the content of public records laws; policy liberalism accounts for only about 24 percent of the variance in the five key statutory provisions (the amount of variance accounted for is the Pearson correlation squared). However, a purely quantitative study such as this one cannot hope to explain all of the characteristics of public records laws. Quantitative techniques are useful for identifying broad trends and patterns, but much of the

explanation for the content of specific state public records laws no doubt rests with what Sharkansky called "the influence of major public figures or dramatic events in history,"[22] and what late Supreme Court Justice Potter Stewart once called "the tug and pull of the political forces in American Society."[23]

In other words, how people, news organizations, and events may have helped shape public records laws is an issue that needs to be addressed by historians and policy analysts in studies of individual states. It may be that some states with moralistic political culture have relatively weak public records laws either because there has been no great demand for government information in those states, or because access to such information is freely granted, in general.

Despite this study's finding that political culture is not related to provisions for openness in public records laws, we do not suggest that political culture is useless as an analytical tool in studies of law and legal processes related to communication. Indeed, political culture may, for example, be quite useful in explaining patterns of media-related litigation,[24] and its relationship to media practices and content merits further consideration.[25]

Notes

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2 Gabriel A. Almond, "Comparative Political Systems," Journal of Politics, 18:391-409 (1956), p. 396.

3 Daniel J. Elazar, American Federalism: A View From the States. (New York: Thomas Y. Crowell Co., 1966).

4 Daniel J. Elazar, American Federalism: A View From the States, 3rd ed. (New York: Harper and Row, 1984).

5 Ira Sharkansky, "The Utility of Elazar's Political Culture: A Research Note," Polity, 2:66-83 (1969).

6 Charles A. Johnson, "Political Culture in the American States: Elazar's Formulation Examined," American Journal of Political Science, 20:491-509 (1976); Timothy D. Schiltz and R. Lee Rainey, "The Geographic Distribution of Elazar's Political Subcultures Among the Mass Population: A Research Note," Western Political Quarterly, 31:410-415 (1978); Russell Hanson, "Political Culture, Interparty Competition and Political Efficacy in the American States," Publius, 10:17-36 (1980).

7 Robert S. Erikson, John P. McIver, and Gerald C. Wright, "State Political Culture and Public Opinion," American Political Science Review, 81:797-813 (1987).

8 Houchins v. KQED, 438 U.S. 1, 12 (1978).

9 Leonard G. Ritt, "Political Cultures and Political Reform: A Research Note," Publius, 4:127-133 (1974).

10 John G. Peters and Susan Welch, "Politics, Corruption, and Political Culture: A View from the State Legislature," American Politics Quarterly, 6:345-356 (1978); Susan Welch and John G. Peters, "State Political Culture and the Attitudes of State Senators Toward Social, Economic Welfare, and Corruption Issues," Publius, 10:59-67 (1980).

11 John Kincaid, "Dimensions and Effects of America's Political Cultures," Journal of American Culture, 5:84-92 (1982).

12 Ibid., p. 90.

13 David Klingman and William W. Lammers, "The General Policy Liberalism Factor in American State Politics," American Journal of Political Science, 28:598-610 (1984).

14 Gerald C. Wright, Jr., Robert S. Erikson, and John P. McIver, "Public Opinion and Policy Liberalism in the American States," American Journal of Political Science, 31:980-1001 (1987).

15 Sharkansky, op cit.

16 David H. Weaver, "The Press and Government Restriction: A Cross-National Study Over Time," Gazette, 23:152-170 (1977); David H. Weaver, Judith M. Buddenbaum, and Jo Ellen Fair, "Press Freedom, Media, and Development, 1950-1979: A Study of 134 Nations," Journal of Communication, 35:104-117 (Spring 1985).

17 F. Dennis Hale, "State Press Law Provisions and State Demographics," Communications and the Law, 6:31-38 (June 1984).

18 Cited in Richard A. Joslyn, "Manifestations of Elazar's Political Subcultures: State Public Opinion and the Content of Political Campaign Advertising," Publius, 10:37-58 (1980).

19 Joslyn, op. cit.

20 Sharkansky, op. cit.

21 For greater detail about the construction of the policy liberalism measure, see Klingman and Lammers, op. cit.

22 Sharkansky, op. cit.

23 Potter Stewart, "Or of the Press," Hastings Law Journal, 26:631-637, 631 (1975).

24 Herbert M. Kritzer, Political Culture and the "Propensity to Sue", Disputes Processing Research Program Working Paper 9-1. (Madison: University of Wisconsin Institute for Legal Studies, 1988).

25 Phillip J. Tichenor, George A. Donohue, and Clarice N. Olien, Community Conflict and the Press (Beverly Hills, CA: Sage, 1980).

TABLE 1 -- Correlations between political culture, policy liberalism, and provisions of public records laws.

	16-item index	5-item index	moralistic culture
16-item index	1.00		
5-item index	0.84***	1.00	
moralistic culture	-0.04	0.08	1.00
policy liberalism	0.30*	0.49***	0.38**

Number of observations: 48

* $p < .02$
** $p < .01$
*** $p < .001$

APPENDIX 1 -- Possible provisions of state public records laws.

Each was coded either "1" (indicating that the provision was in a state's law) or "0" (indicating no such provision).

A -- Record defined in terms of custody, not something more restrictive, such as whether it is required by law to be maintained.

B -- Exemptions to mandatory disclosure are <u>all</u> permissive.

C -- Disclosable portions of records that contain both disclosable and non-disclosable information must be disclosed.

D -- No fee for segregating disclosable from non-disclosable information.

E -- Provision for timely agency response (within 10 days) to a request for access.

F -- A clear statement in the law that access rights should be liberally construed.

G -- Record liberally defined in terms of physical form.

H -- "Any person" has rights of access to records.

I -- Persons seeking access need not state a reason for desiring access.

J -- No charge for routine searches for a document.

K -- The law contains an explicit provision for copying.

L -- Explicit prohibition of post-request destruction of records.

M -- Requester has right to a written reason for non-disclosure.

N -- Explicit provision for judicial or quasi-judicial review of a denial of access.

O -- Plaintiffs <u>must</u> recover costs if they substantially prevail in an appeal of a denial of access.

P -- Civil or criminal penalties are possible for arbitrary withholding of public records.

APPENDIX 2 -- Strength of state public records laws.

	All 16 provisions											Five key provisions						
	F	G	H	I	J	K	L	M	N	O	P	A	B	C	D	E	5-item index	16-item index
Alabama	0	0	0	0	0	1	0	0	0	0	1	0	0	0	0	0	0	2
Arizona	0	0	1	0	1	1	1	0	1	0	1	0	0	1	0	0	1	7
Arkansas	0	1	0	0	0	1	0	0	1	1	1	0	0	0	0	0	0	5
California	0	1	1	0	0	1	0	0	1	1	0	1	1	1	1	1	5	10
Colorado	0	1	1	0	0	1	0	1	1	0	1	1	0	1	0	0	2	8
Connecticut	1	1	1	0	0	1	0	1	1	1	1	1	0	0	0	1	2	10
Delaware	1	1	0	0	0	1	0	0	1	0	0	1	0	0	0	0	1	5
Florida	1	1	1	1	0	1	0	0	1	1	1	1	0	1	0	0	2	10
Georgia	0	0	1	0	0	1	0	0	1	1	0	1	0	0	0	0	1	5
Idaho	0	0	0	0	0	1	0	0	0	0	0	0	1	0	0	0	1	2
Illinois	1	1	1	0	1	1	0	1	1	0	0	1	0	1	0	1	3	10
Indiana	1	1	1	1	1	1	1	1	1	0	0	1	0	1	0	1	3	12
Iowa	0	1	1	0	0	1	0	0	1	1	1	0	0	0	0	0	0	6
Kansas	1	1	1	1	1	1	0	0	1	0	0	1	0	1	0	0	2	9
Kentucky	0	1	1	1	1	1	0	1	1	1	1	1	1	0	0	1	3	12
Louisiana	1	1	1	1	0	1	0	1	1	1	1	1	0	0	0	1	2	11
Maine	1	1	1	0	0	1	0	1	1	0	1	1	0	0	0	1	2	9
Maryland	1	1	1	0	0	1	0	1	1	0	1	1	0	1	0	1	3	10
Mass.	0	1	1	1	0	1	0	0	1	0	0	1	0	1	0	1	3	8
Michigan	1	1	1	1	0	1	0	1	1	1	1	1	1	1	0	1	4	13
Minnesota	0	1	1	0	0	1	0	1	1	0	1	1	0	0	0	0	1	7
Mississippi	0	1	1	0	0	1	0	1	1	0	1	1	0	0	0	0	1	7
Missouri	0	0	0	0	0	1	0	0	0	0	1	0	0	0	0	0	0	2
Montana	0	1	0	0	0	1	0	0	0	0	0	1	0	0	0	0	1	3
Nebraska	1	1	1	0	0	0	0	1	1	0	1	1	1	1	0	0	3	9
Nevada	0	0	1	0	0	1	0	0	0	0	1	0	0	0	0	0	0	3
N. Hampshire	1	0	0	0	0	1	0	0	1	1	1	0	0	0	0	1	1	6
New Jersey	0	0	0	0	0	1	0	0	1	0	0	0	1	1	0	0	2	4
New Mexico	0	0	0	0	0	1	0	0	1	1	0	0	0	0	0	0	0	3
New York	1	1	1	0	0	1	0	1	1	0	0	1	0	0	0	1	2	8
N. Carolina	0	1	1	0	0	1	0	0	1	0	0	1	0	0	0	0	1	5
N. Dakota	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	1
Ohio	0	0	1	1	1	1	0	0	1	0	0	1	0	0	0	0	1	6
Oklahoma	0	1	1	0	0	1	0	0	1	1	0	1	0	1	0	0	2	7
Oregon	0	1	1	0	0	1	0	0	1	1	0	1	0	1	0	1	3	8
Pennsylvania	0	0	0	0	0	1	0	0	1	0	0	0	0	0	0	0	0	2
Rhode Island	1	1	1	0	0	1	0	1	1	0	1	1	1	1	0	1	4	11
S. Carolina	1	1	1	0	0	1	0	1	1	0	1	1	0	1	0	0	2	9
S. Dakota	0	1	1	0	0	0	0	0	0	0	0	1	0	0	0	0	1	3
Tennessee	1	0	0	0	0	1	0	0	1	0	0	0	0	0	0	0	0	3
Texas	1	1	1	1	0	1	0	0	1	0	0	0	0	0	0	1	1	7
Utah	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	1
Vermont	1	0	1	0	1	1	0	1	1	0	0	1	0	0	0	1	2	8
Virginia	1	1	0	0	0	1	0	1	1	0	1	1	1	0	0	0	2	8
Washington	1	0	1	1	0	1	0	0	1	1	0	0	0	0	0	0	0	6
W. Virginia	1	1	1	0	0	1	0	1	1	0	1	1	0	0	0	1	2	9
Wisconsin	1	1	1	1	1	1	1	1	0	1	1	1	1	1	1	1	5	15
Wyoming	1	1	1	0	0	1	0	1	1	0	1	1	0	0	0	0	1	8